

ENTERED

February 03, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| RAIL SCALE, INC., a Florida Corporation, |) | Civil Action No.: 4:21-cv-03698 |
| |) | |
| Plaintiff, |) | JURY TRIAL DEMANDED |
| |) | |
| v. |) | |
| |) | |
| WEIGHING TECHNOLOGIES, INC., d/b/a |) | |
| WT RAIL, a Texas Corporation, |) | |
| |) | |
| Defendant. |) | |
| |) | |

(Proposed) FIFTH AMENDED SCHEDULING ORDER

It is hereby **ORDERED**, after consultation with the parties, that the following schedule will apply in this case:

| | <u>Current Dates</u> | <u>Agreed Proposed Dates</u> | |
|--|------------------------------|-------------------------------------|--|
| | January 26, 2022 (Passed) | | <u>Scheduling Conference</u> The parties held a Fed. Rule Civ. P. 26(f) conference on this date over video conference. |
| | February 4, 2022 (Passed) | | <u>Status Conference</u> The Court held a status conference on this date with all parties. |
| | March 4, 2022 (Passed) | | <u>Parties to make Fed. Rule Civ. P. 26(a)(1) Initial Disclosures</u> Except disclosure of asserted claims and preliminary infringement contentions as discussed below. |

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| 1 | March 18, 2022 (Passed) | | <p>Comply with P.R. 3-1 and P.R. 3-2: Parties to make disclosure of asserted claims and preliminary infringement contentions.</p> <p><i>After this date</i>, it is necessary to obtain leave of court to add and/or amend infringement contentions, pursuant to Patent Rule (P.R.) 3-7.</p> <p>Join additional parties. It is not necessary to file a motion to join additional parties before this date. Thereafter, it is necessary to obtain leave of court to join additional parties.</p> <p>Add new patents and/or claims for patents-in-suit. It is not necessary to file a motion to add additional patents or claims before this date. Thereafter, it is necessary to obtain leave of court to add patents or claims.</p> |
| 2 | May 24, 2022 (Passed) | | <p>Comply with P.R. 3-3 and 3-4: Parties to serve preliminary invalidity contentions and make document production. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to P.R. 3-7.</p> <p>Add any inequitable conduct allegations to pleadings. Before this date, it is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings. Thereafter, it is necessary to obtain leave of court to add inequitable conduct allegations to pleadings.</p> |
| 3 | September 15, 2022 (Passed) | | Comply with P.R. 4-1: Parties' exchange of proposed terms and claim elements needing construction. |
| 4 | November 1, 2022 (Passed) | | <p>Comply with P.R. 4-2: Parties' exchange of preliminary claim constructions and extrinsic evidence.</p> <p>Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).</p> |
| 5 | November 8, 2022 (Passed) | | <p>Deadline to comply with P.R. 4-3: Filing of joint claim construction and pre-hearing statement.</p> <p>Disclosure of parties' claim construction experts & service of FED. R. CIV. P. 26(a)(2) materials</p> |

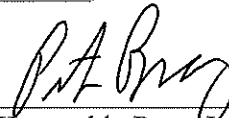
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| 6 | January 27, 2023 (Passed) | | <p>Deadline for all parties to file amended pleadings (pre-claim construction). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. (It will be necessary to file a Motion for Leave to Amend after this deadline.)</p> <p>NOTE: If the amendment would affect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to P.R. 3-7 irrespective of whether the amendment is made prior to this deadline.</p> |
| 7 | February 6, 2023 | <p><i>Not required</i></p> <p>February 6, 2023</p> | <p>Each party to provide name, address, phone number, and curriculum vitae for up to three (3) candidates for a court-appointed special master (<i>see</i> FED. R. CIV. P. 53) or court-appointed expert (<i>see</i> FED. R. EV. 706), with information regarding the nominee's availability for <i>Markman</i> hearing or other assignments as deemed necessary by the court. The parties shall indicate if they agree on any of the nominees. <u>(Only if court requests it –as amended by Judge Bray in previously signed order)</u></p> |
| 8 | February 6, 2023 | February 6, 2023 | <p>Deadline for parties (optional) to provide Court with written tutorials concerning technology involved in patent in issue. If a special master or court-appointed expert is hereafter selected, the parties will provide each tutorial to the master or expert.</p> |
| 9 | February 6, 2023 | February 6, 2023 | Responses to amended pleadings due. |
| 10 | February 6, 2023 | February 6, 2023 | Discovery deadline on claim construction issues (<i>see</i> P.R. 4-4) |
| 11 | February 3, 2023 | February 10, 2023 | <p>Comply with P.R. 4-5(a): the party claiming patent infringement must serve and file a Claim Construction Opening Brief with its supporting evidence. The moving party is to provide the Court with 2 copies of the binders containing their Opening Brief and exhibits. If a special master or court-appointed expert has been appointed, the moving party must provide the Opening Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.</p> |

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| 12 | March 10, 2023 | March 17, 2023 | Comply with P.R. 4-5(b): Responsive Brief and supporting evidence due to party claiming patent infringement. The moving party is to provide the Court with two (2) courtesy copies of the Responsive Brief and exhibits. If a special master or court-appointed expert has been appointed, the nonmoving party must supply a copy of its Response on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert. |
| 13 | March 17, 2023 | March 24, 2023 | <p>Comply with P.R. 4-5(c): Party claiming infringement shall file a Reply Brief and supporting evidence on claim construction. The moving party is to provide the Court with two (2) copies of the Reply Brief and exhibits.</p> <p>If a special master or court-appointed expert has been appointed, the moving party must provide the Reply Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.</p> <p>Parties to file a notice with the Court stating the estimated amount of time requested for the Claim Construction (<i>Markman</i>) Hearing. The Court will notify the parties if it is unable to accommodate this request.</p> |
| 14 | February 17, 2023 | April 3, 2023 | Parties to submit Claim Construction Chart in WordPerfect 8.0 (or higher) format in compliance with P.R. 4-5(d). |
| 15 | April 28, 2023 (** This and Any Other Necessary Deadlines Pending Court Approval) | April 28, 2023 (** This and Any Other Necessary Deadlines Pending Court Approval) | Claim Construction (Markman) Hearing at 10:00 a.m. – Location (live – hearing to be held in the courtroom) TBD |
| 16 | July, 2023 | July, 2023 | <p>Court's Decision on Claim Construction (<i>Markman</i> Ruling)</p> <p><u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u></p> |
| | TBD** | TBD** | <p>Status Conference (*subject to the Court's calendar)</p> <p>**To be continued by Judge in accordance with schedule</p> |

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| | TBD** | TBD** | Submit remaining schedule for items set forth below. |
| 17 | TBD | TBD | Deadline for final infringement contentions and to amend pleadings on infringement claims NOTE: Except as provided in P.R. 3-6, if the amendment would affect preliminary or final infringement contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline. |
| 18 | TBD | TBD | Deadline for final invalidity contentions and to amend pleadings on invalidity claims. NOTE: Except as provided in P.R. 3-6, if the amendment would affect preliminary or final invalidity contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline. |
| 19 | TBD | TBD | Comply with P.R.3-8. All parties furnish documents and privilege logs pertaining to willful infringement. |
| 20 | TBD | TBD | Date for designation of expert witnesses on non-construction issues on which the party has the burden of proof ("BOP") and service of expert witness reports. [Refer to Fed. Rules of Civil Proc. for information required.] |
| 21 | TBD | TBD | Date for designation of responsive expert witnesses on non-claim construction issues on which party does <i>not</i> have BOP, and service of responsive expert witness reports. [Refer to Fed. Rules of Civil Proc. for information required.] |
| 22 | TBD | TBD | Discovery Deadline on all issues. <u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u> |
| 23 | Motions due: TBD Responsive Briefs due: TBD Reply Briefs due: TBD | Motions due: TBD Responsive Briefs due: TBD Reply Briefs due: TBD | Dispositive and Non-Dispositive Motions and Briefing deadlines |

Do NOT file discovery motions. Should a discovery issue arise, the parties shall file a joint statement not exceeding five pages describing the nature of the dispute. A hearing will be set shortly after the statement is filed.

SIGNED on this 2 day of Feb., 2023.

 U.S.M.J.
The Honorable Peter J. Bray
~~UNITED STATES DISTRICT JUDGE~~